



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-254-FOR; Docket ID: OSM-2012-0012]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Ohio regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio's proposed amendment updates the Ohio Administrative Code (OAC) to address issues raised by OSM regarding consistency of Ohio's surface mining program with the final Federal rule relative to Ownership and Control, Permit and Application Information and Transfer, and Assignment or Sale of Permit Rights, which became effective December 3, 2007. The proposed amendment specifically alters the following regulations within the OAC: Definitions; Incorporation by reference; Permit applications, requirements for legal, financial, compliance, and related information; Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights; Improvidently issued permits; and Enforcement and Individual civil penalties. By submittal of this proposed amendment, Ohio intends to revise its approved program pursuant to the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, to ensure Ohio's proposed regulatory provisions are no less

effective than the corresponding regulations. This document provides the times and locations that the Ohio program and proposed amendment are available for public inspection, the comment period during which you may submit written comments on this amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on these amendments until 4:00 p.m., Eastern Standard Time (EST) [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., EST on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. OH-254-FOR by any of the following methods:

- **Mail/Hand Delivery:** Mr. Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Rm. 102, Columbus, Ohio 43230
- **Fax: (614) 416-2248**
- **Federal eRulemaking Portal:** The amendment has been assigned Docket ID OSM-2012-0012. If you would like to submit comments, go to <http://www.regulations.gov> and follow the instructions.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to review copies of the Ohio regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSM's Pittsburgh Field Division Office; or you can view the full text of the program amendment available for you to read at www.regulations.gov.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Ben Owens, Acting Chief

Pittsburgh Field Division

Office of Surface Mining Reclamation and Enforcement

4605 Morse Road, Room 102

Columbus, OH 43230

Telephone: (614) 416- 2238, E-mail: bowens@osmre.gov

Lanny E. Erdos, Chief

Division of Mineral Resources Management

Ohio Department of Natural Resources

2045 Morse Road, Building H-2

Columbus, Ohio 43229-6693

Telephone: (614) 265-6893, E-mail: Lanny.Erdos@dnr.state.oh.us

Fax: (614) 265-7999

FOR FURTHER INFORMATION CONTACT: Ben Owens, Acting Chief, Pittsburgh

Field Division; Telephone: (614) 416-2238. E-mail: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description and Submission of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of SMCRA permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "...a State law which provides for the regulation of surface coal mining and reclamation operations in

accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. § 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program effective August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Ohio program in the August 16, 1982, Federal Register (41 FR 34688). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description and Submission of the Proposed Amendment

Following the approval of Federal rule, "Ownership and Control; Permit and Application Information; Transfer, Assignment, or Sale of Permit Rights; Final Rule" on December 7, 2007 (72 FR 68000). OSM performed a side-by-side comparison of Ohio's regulations to ensure the OAC provisions were no less effective than the Federal regulations. OSM and Ohio discussed the implementation of Ohio regulations and potential revisions. Ohio, in a letter dated September 25, 2009, (Administrative Record Number OH 2190-01) responded to the findings from the OSM side-by-side analysis, described Ohio's plan to address provisions that were determined to be less effective than the Federal regulations, and stated a proposed amendment would be submitted to OSM. By letter dated March 30, 2012, (Administrative Record Number OH 2190-01), Ohio sent OSM a request to approve six revised regulations. Key provisions of the proposed amendment add the

definitions of “knowingly,” “transfer, assignment, or sale of permit rights,” and “violation” to the OAC; require enhanced identification of interests; a provision for a central repository documenting identification of interests; and alteration for the determination of an improvidently issued permit. The following is a summary of the revisions and additions to OAC:

1501:13-1-02. Definitions.

Changes have been made to reflect the absence of “knowing” or “knowingly” from the OAC definition section. This term has been added to conform to the Federal definition defined in 30 CFR 701.5. Additionally, the proposed amendment alters the definition in other sections of the OAC. The thrust of the change is the substitution of the word “individual” formerly used by Ohio, to the usage of “person” as utilized in the Federal regulations.

Ohio has added the definition of “[t]ransfer, assignment, or sale of permit rights” to the definition section. Ohio’s definition of this term contemplates any change of a permittee, including any fundamental legal change in the structure or nature of the permittee or a name change.

The definition of “violation” has been added for the purposes of the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;
- Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; and

- Improvidently issued permits.

Violation is defined as any of the following:

- Written notification from a governmental agency identifying a failure to comply with applicable Federal or state law or regulations relative to environmental air or water protection;
- Noncompliance identified by the Chief of the Division of Mineral Resources Management, OSM, or a comparable authority, pursuant to the federal or state regulatory program. Notice of this noncompliance may be given via a notice of violation, cessation order, final order, bill or demand letter relative to a delinquent civil penalty; a bill or demand letter relative to delinquent reclamation fees or a performance security or bond forfeiture order.

The definition of “violation notice” has been altered to apply to the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;
- Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; and
- Improvidently issued permits.

A violation notice is now defined as a written notification from a regulatory authority or other governmental entity of a violation, as defined in this section. This change reflects the language used to define this term in 30 CFR 701.5.

1501:13-14-02. Enforcement.

Section (A)(8) has been revised to require any permittee, within thirty days of the issuance of a cessation order, to provide accurate and current identification of interest information as defined in the Permit applications; requirements for legal, financial compliance and related information sections of the OAC. Formatting changes were made to reflect changes in numbering.

1501: 13-14-06 Individual civil penalties.

Revisions were made to remove the definition of “knowingly” from this section. Consequently, formatting changes were required to account for the elimination of this definition.

1501: 13-4-03. Permit applications; requirements for legal, financial, compliance and related information.

Grammar and formatting changes are present that do not alter the meaning or intent of the OAC as previously structured. Multiple changes have been made to incorporate all inclusive gender reference.

In addition, sections (B) (2) and (3) have been altered to require submission of addresses for all owners of record, holders of record of any leasehold interests, and any purchasers of record of the property to be mined. Previously this requirement did not require address submission. The alteration expands the requirements for providing addresses in order to encompass all aspects of interest.

This section is further revised to require submission of data when a departure or change of an individual named in a permit application occurs.

Section (C)(1) requires violation history relative to an operator be provided in the permit application. Previously, the applicant was the only individual required to submit this information.

Section (C)(2) requires date of suspension, revocation, or forfeiture.

Section (C)(3) also adds a provision requiring all applications to include a listing of any cessation order or notice of violation in instances when the abatement period has not expired.

Section (C)(4) requires a certification by the Federal or state regulatory authority issuing the notice of violation or cessation order confirming the violation has been abated or corrected is required. This provision does not interfere with the requirement in (C)(4)(f) that all violations and cessation orders having an expired abatement period must still provide information as to the action taken to abate or correct the violation or cessation order.

Under (C)(4) the addition of “Central file for identity information,” allows applicants or permittees to provide requisite information in a streamlined method whereby all information required in the Permit applications, revisions and renewals and transfers, assignments and sales of permit rights provisions, as outlined in OAC sections 1501:13-4-06 and 1501:13-5-01, are submitted to the Chief of the Division of Mineral Resources Management and are applicable to all permits held by that applicant or permittee. These items will be maintained in a central file for reference in the event of any subsequent

submission. To participate, applicants or permittees must submit a sworn or affirmed oath, in writing, verifying all the information is accurate and complete. The central file will be maintained for reference, eliminating the need to provide identity information in each application. The file will be available for public review upon request. This information shall be maintained and updated.

In the event a permittee or applicant has an established central file, certification shall be made that the file is accurate and complete when submitting permit applications, revisions, renewals, transfers, assignments, and sales of permits rights in accordance with 1501:13-4-06. Upon submission, the permittee shall submit a certification, provided by the Chief of the Division of Mineral Resources Management swearing or affirming the information is accurate, complete, and updated. This must be in the form of a written oath. Any information that is missing, as required by the provisions set forth herein, must be submitted and accompanied by a written oath as described relative to providing an affirmation of a complete information repository.

Throughout the regulations reference to the proposed central repository for identification information is referenced and incorporated.

1501:13-4-06. Permit applications revisions, and renewals, and transfers, assignments and sales of rights.

The amendment proposes to alter Section (I) by adding a provision requiring notification within 30 days of any addition, departure or change in the structure. This must be done in writing and must include any person's name, address, telephone number, title, and relationship to the applicant, including percentage of ownership, interest and position

within the organizational structure. Information detailing commencement and departure are also required.

1501:13-5-02. Improvidently issued permits.

Pursuant to the proposed amendments, should the Chief of the Division of Mineral Resources Management have reason to believe a coal mining and reclamation permit was improvidently issued, then he or she shall make a preliminary finding indicating improvident issuance if:

- A determination based on the permit eligibility, in effect at the time of issuance, indicates either:
 - a) The permit should not have been issued due to an unabated or uncorrected violation or
 - b) The permit was issued based on the presumption that a violation was in the process of being corrected;
- the violation remains unabated or uncorrected and the time frame for appeal is expired or a payment schedule, as approved, is not being complied with as ordered ;
- ownership or control existing at the time of issuance demonstrates a link to the violation and remains in effect, or if the link was severed, the permittee continues to be responsible for the violation.

Upon a preliminary finding of an improvidently issued permit, the Chief may serve the permittee with written notice establishing a prima facie case indicating the permit

was improvidently issued. Within thirty days, the permittee may request an informal review and may provide evidence to the contrary.

Section (C) augments references to abatement of a violation by adding the term “correction.”

Section (D) allows the Chief of the Division of Mineral Resources Management to suspend a permit as opposed to the previous regulation granting only the right to rescind the permit. Moreover, the proposed amendment provides that, upon a determination indicating the permit was improvidently issued, the Chief shall serve the permittee notice of the proposed suspension and rescission which includes the reasons for the finding and stipulates within sixty days the permit will be suspended, or in one hundred and twenty days, the permit will be rescinded, unless the permittee submits rebuttal proof and the Chief finds:

- The previous determination was incorrect;
- The violation is under appeal and an initial judicial decision affirming the violation is absent;
- The violation is subject to an approved abatement, correction plan or payment schedule;
- Ownership or control is severed and no continuing responsibility is apportioned to permittee; or
- An appeal as to ownership or control exists and an initial judicial decision affirming such ownership or control is absent.

The proposed amendment eliminates previous provisions allowing automatic suspension within ninety days upon proper showing.

In the event the permit is deemed suspended or rescinded the Chief shall immediately order the cessation of coal mining and reclamation operations and post written notice of the cessation order at the Division of Mineral Resources Management District Office closest to the permit area.

1501: 13-1-14. Incorporation by reference.

The website provided in the proposed amendment updates the public to ensure access to federal regulation references. The revised website is www.gpo.gov/fdsys/.

III. Public Comment Procedures

Under the provisions of 30 CFR § 732.17(h), we are seeking your comments on whether Ohio's proposed amendment satisfies the applicable program approval criteria of 30 CFR § 732.15. If we approve the amendment, it will become part of Ohio's program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see DATES) or sent to an address other than those listed (see ADDRESSES) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comments, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., EST, on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience

and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the *Federal Register* indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved,

approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, Appalachian Region

June 8, 2012
Date

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